

## § 1251.8

## 36 CFR Ch. XII (7–1–12 Edition)

(h) Allowing such testimony or production of records would be in the best interest of NARA or the United States;

(i) The records or testimony can be obtained from the publicly available records of NARA or from other sources;

(j) The demand is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(k) Disclosure would violate a statute, Executive Order or regulation;

(l) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential commercial or financial information, otherwise protected information, or information which would otherwise be inappropriate for release;

(m) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceeding, or compromise constitutional rights;

(n) Disclosure would result in NARA appearing to favor one litigant over another;

(o) Disclosure relates to documents that were created by another agency;

(p) A substantial Government interest is implicated;

(q) The demand is within the authority of the party making it;

(r) The demand is sufficiently specific to be answered; and

(s) Other factors, as appropriate.

### **§ 1251.8 Who is authorized to accept service of a subpoena demanding the production of records or testimony?**

(a) Demands for testimony, except those involving an employee of NARA's Office of the Inspector General, must be addressed to, and served on, the General Counsel, National Archives and Records Administration, Suite 3110, 8601 Adelphi Road, College Park, MD 20740–6001.

(b) Demands for the testimony of an employee of NARA's Office of the Inspector General must be addressed to, and served on, the Inspector General, National Archives and Records Administration, Suite 1300, 8601 Adelphi Road, College Park, MD 20740–6001.

(c) Demands for the production of NARA operational records, except those of the Office of the Inspector

General, must be addressed to, and served on, the General Counsel.

(d) Demands for records of the Inspector General must be addressed to, and served on, the Inspector General.

(e) Demands for the production of records stored in a Federal Records Center (FRC), including the National Personnel Records Center, must be addressed to, and served on, the director of the FRC where the records are stored. NARA honors the demand to the extent required by law, if the agency having legal title to the records has not imposed any restrictions. If the agency has imposed restrictions, NARA notifies the authority issuing the demand that NARA abides by the agency-imposed restrictions and refers the authority to the agency for further action.

(f) Demands for the production of materials designated as Federal archival records, Presidential records or donated historical materials administered by NARA must be addressed to, and served on either: the Assistant Archivist for Records Services—Washington, DC (for records located in Headquarters); Director of Archival Operations (for records located in the regions); or the appropriate Presidential Library Director.

(g) For matters in which the United States is a party, the Department of Justice should contact the General Counsel instead of submitting a demand for records or testimony on its own or another agency's behalf.

(h) The demanding party is responsible for complying with all service requirements, including any additional requirements contained in the Federal Rules of Civil Procedure or other statutory or regulatory authority.

(i) Contact information for each NARA facility may be found at 36 CFR part 1253.

### **§ 1251.10 What are the filing requirements for a demand for documents or testimony?**

You must comply with the following requirements, as appropriate, whenever you issue a demand to a NARA employee for records, agency information or testimony:

(a) Your demand must be in writing and must be served on the appropriate party as identified in § 1251.8.

(b) Demands for production of records that are governed by the Privacy Act require authorization of a court of competent jurisdiction as defined in § 1251.3.

(c) Your written demand (other than a demand pursuant to the Federal Rules of Civil Procedure in a case in which NARA is a party, in which case you must comply with the requirements of that rule) must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs the need to maintain any confidentiality of the information and outweighs the burden on NARA to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than a NARA employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used instead of testimony;

(7) A description of all previous decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties may require with each NARA employee for time spent by the employee

in connection with the request for testimony.

(d) NARA reserves the right to require additional information to process your demand.

(e) Your demand (other than a demand pursuant to the Federal Rules of Civil Procedure in a case in which NARA is a party, in which case you must comply with the requirements of that rule) should be submitted at least 45 days before the date that records or testimony is required. Demands submitted in less than 45 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(f) Failure to cooperate in good faith to enable the General Counsel to make an informed decision may serve as the basis for a determination not to comply with your demand.

(g) The information collection contained in this section has been approved by the Office of Management and Budget under the Paperwork Reduction Act under the control number 3095-0038.

#### **§ 1251.12 How does NARA process your demand?**

(a) After service of a demand for production of records or for testimony, an appropriate NARA official reviews the demand and, in accordance with the provisions of this, determines whether, or under what conditions, to produce records or authorize the employee to testify on matters relating to agency information.

(b) NARA processes demands in the order in which we receive them. NARA will not complete and return certifications, affidavits, or similar documents submitted with a demand for records, but if requested will certify records in accordance with NARA's published fee schedule at 36 CFR part 1258. Absent exigent or unusual circumstances, NARA responds within 45 days from the date of receipt. The time for response depends upon the scope of the demand.

(c) The General Counsel may grant a waiver of any procedure described by this part where a waiver is considered